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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/603,947	06/25/2003	W. Perry Dowst	65841-017 (WMST-003)	3129
20874 7590 07/10/2008 MARIAMA MULDOON BLASIAK & SULLIVAN LLP 250 SOUTH CLINTON STREET SUITE 300 SYRACUSE, NY 13202				
EXAMINER				
PRICE, CARL D				
ART UNIT		PAPER NUMBER		
3749				
MAIL DATE		DELIVERY MODE		
07/10/2008		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/603,947

Applicant(s)

DOWST ET AL.

Examiner

Carl D. Price

Art Unit

3749

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
 - If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
 - If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
 - Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 08 April 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 106-160 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 106-160 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-649)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

Response to Arguments

Applicant's arguments filed **04/08/2008** have been fully considered but they are not persuasive. In this regard, but for amendments to independent claim 117, applicant's response amounts to a request for reconsideration of previously presented claims 106-116 and 118-160 arguing the following:

"In respect to independent claims 106, 117 and 151, the applicants believe that the recited features with respect to the interface of the vessel and the top housing are substantially different from those features of the Goerl reference.

That is, in the Goerl reference, the member 16 has a front turned bead 53 that engages the portion 32 or portion 22 of the pan 12. It should be recognized that these portions 22 and 32 are underside surfaces of the respective rims 24 and 34 of the pans 12 and 13. The rims 24 and 34 are clearly at the top end of the pans 12 and 13, and therefore the surfaces 22 and 32 are associated with the top ends of the pans 12 and 13. It is there rims 22 and 32 which interface with the outturned bend 53 at the top of the top housing. Each of the pans 12 and 13 have a downwardly extending portion (23 for pan 12 and 33 for pan 13) which connect to the respective bottoms 21 and 31. Thus, each of the pans 12 and 13 interface with the outturned bead 53 at the top member 16 near the upper ends thereof and have a major portion of the pan extending down into the member 16. It would appear from the description that the purpose is to allow the heat to flow not only the bottoms 21 and 31 but also over the side surfaces 23 and 33.

This is substantially different from the applicant's invention where the heat is preferably directed to the lower end of the vessel so that the attached protrusion can most effectively transfer the heat from the burner to the vessel.

Referring now to the claims, each of the independent claims 106, 117 and 151 recite a vessel having a top and bottom end, and a top housing having a top rim coupled circumferentially to the external bottom end of the vessel.

This structure allows for the heat from the burner to rise up through the top housing and be directed entirely to the bottom side of the bottom end so as to take full advantage of the protrusions rather than having the heat distributed over the sides of the vessel as would be the case with the Goerl reference."

The examiner can not however agree with applicant's attempt to characterize the Goerl underside surface portions 22 and 32 (the respective rims 24 and 34 of the pans 12 and 13) as structure necessarily different from the otherwise only broadly claimed "a thermally conductive bottom end" (claims 106, 129, 140 and 151) or "a bottom end planar surface of a vessel to be heated" (claim 117). That is, since the planar surface portions 22 and 32 of Goerl form at least a

bottom (underside) portion of the vessel this structure meets the broadly claimed recited "bottom end". The recitation does not preclude structure such as that shown and disclosed in Goerl. In response to applicant's arguments against the references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986).

In response to applicant's arguments against the combination of teachings proffered as obvious combination(s) in the Examiner's rejection of claims, the Examiner restates the reasons, responding to applicant's arguments filed 10/2/2006, 01/25/2007 and 10/17/2007, why it is believed the invention would have been obvious to a person having ordinary skill in the art at the time of applicant's invention.

With regard to the prior art reference of **GB000882881 (Horner)** applicant argues the following:

"Firstly, the applicants do not agree that this reference is in the "same portable heater field of endeavor" as the present invention. This reference describes a tea kettle which may be portable to the extent that it is moved to and from a stove but is not a self-contained, portable heating system which includes a heater with a top housing, bottom housing and a burner. Accordingly, we do not believe that the tea kettle design is necessarily in the same portable heater field of endeavor as suggested by the Examiner."

The examiner however maintains the position that **GB000882881 (Horner)** is indeed related to applicant's same portable heater filed of endeavor at least in the manner suggested in applicant's remarks. That is, the tea kettle "may be portable to the extent that it is moved". Notwithstanding the potential uses or applications for a heating vessel of the type disclosed **GB000882881 (Horner)** is at least of the applicant's same portable heated cooking vessel and addresses the same problem of enhancing the transfer of heat from sources not unlike that intended by applicant. **GB000882881 (Horner)** discloses, for example, "heating the vessel by "a gas flame or by a flame from an oil or spirit burner" and where vessel construction is intended to provide "improved means for distributing the heat of the flame or gases over the base of the appliance".

With regard to the prior art reference of **US002154305 (Goerl)** applicant argues the following:

"It should be recognized that the '305 patent has been publicly available since 1939 and that the '881 has been publicly available since 1961. If the combination of the features of these two references were obvious to one skilled in the art, why has no one else (i.e. other than the present inventors), made such a combination in the last 45 years?"

With regard to the prior art reference of **DE3339848** applicant argues the following:

"Applicant is reminded that the prior art reference of **DE3339848** is cited merely to teach the known advantages sizing a burner to be smaller than a heat transfer opening of a vessel assembly, to ensure optimal heat transfer. In response to applicant's arguments against the references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986)."

Also, with regard to the prior art reference of **US002154305 (Goerl)**, as applied to claims 151-154 and 159, applicant argues the following:

"Even though the diameter of the lower end rim (55) is less than the diameter of the vessel outlet port (35), it does not follow that the bottom housing 17 can be placed in the vessel cavity, since the lower wall portion 33 is conically tapered and would not allow the bottom housing 17 to be placed therein in an upright position. For that reason, the bottom housing 17 is placed within the container 13 in an inverted position as will be seen in Fig. 4. For clarification purposes claim 152 has been amended to further distinguish over the '305 reference."

In this regard, applicant's attention is directed to Figure 4 of **US002154305 (Goerl)** which shows the bottom housing (17) contained within the interior cavity of the vessel (13). The vessel of **US002154305 (Goerl)** does indeed include a bottom (31) arranged in the same manner intended by applicant. The end wall portion (at 32) is the structural equivalent to the broadly recited "...the external bottom end of said vessel ...". That is, the top housing (16) has a top rim (53) coupled circumferentially to the external bottom end of the vessel (at 32, 53).

Claims 106-160 remain rejected for the reasons set forth herein above as well as for the reasons set forth in the examiner's action re-stated herein below.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

Art Unit: 3749

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims Rejected under 35 U.S.C. 102(b)

Claims **151-154** and **159** are rejected under 35 U.S.C. 102(b) as being anticipated by

US002154305 (of record).

US002154305 shows a portable heating system comprising:

- a vessel (13) having a thermally conductive bottom end defining an external bottom side (31, 32, 33) of the vessel;
- a top housing (16) having a top rim (53) coupled circumferentially to the external bottom end of the vessel (at 32, 53), a side structure (54) extending downwardly from the top rim (53) and having a plurality of exhaust vents (82) formed therein, and a bottom rim (48, 51);
- a bottom housing (17) having a top rim (49, 52) configured to be selectively coupled to the top housing bottom rim (48) and containing a burner (15) having a heat outlet head disposed below the external bottom side of the vessel when the bottom housing is coupled to the top housing (see figure 8), the bottom housing further having a plurality of air inlet vents (81) formed therein;
- wherein the bottom housing is so configured and sized as to be removable from said top housing and temporarily placed for storage in the vessel cavity (see figure 4).
- In regard to claim 152, since the diameter of the lower end rim (55) of the bottom housing (17) is less than the diameter of vessel outlet port (35) it is capable of being placed in the vessel in the manner set forth in the claim.
- In regard to claims 153 and 154, the fuel source and burner are formed as a single unit and supported by and at a lower bottom housing location (i.e. –below the top rim (49)).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

Claims Rejected under 35 U.S.C. 103(a)

Claims **106-116** are rejected under 35 U.S.C. 103(a) as being unpatentable over **US002154305** (of record) in view of **GB000882881** (newly cited).

US002154305 shows a portable heating system comprising:

- a vessel (13) having a thermally conductive bottom end defining an external bottom side (31, 32, 33) of the vessel;
- a top housing (16) having a top rim (53) coupled circumferentially to the external bottom side of the vessel (at 32, 53), a side structure (54) extending downwardly from the top rim (53) and having a plurality of exhaust vents (82) formed therein, and a bottom rim (48, 51);
- a bottom housing (17) having a top rim (49, 52) configured to be selectively coupled to the top housing bottom rim (48) and containing a burner (15) having a heat outlet head disposed below the external bottom side of the vessel when the bottom housing is coupled to the top housing (see figure 8), the bottom housing further having a plurality of air inlet vents (81) formed therein

US002154305 shows and discloses the invention substantially as set forth in the claims with possible exception to:

- a single thermally conductive member (15) along the entire extent of a peripheral edge of the external bottom side. The member comprising a continuous piece of aluminum material soldered to and positioned adjacent to and extending continuously over the bottom of a vessel (see page 2, lines 100-105).

April 11, 1939.

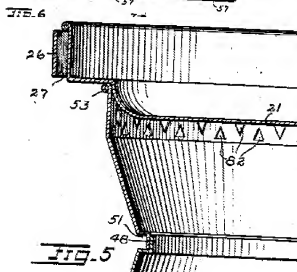
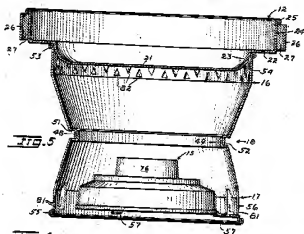
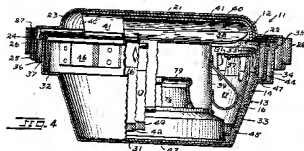
C. P. GOERL

COOKING KIF

Filed March 9, 1939

2,154,305

3 Sheets-Sheet 2



April 11, 1939.

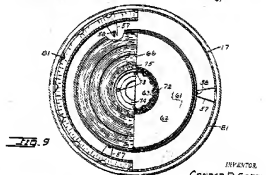
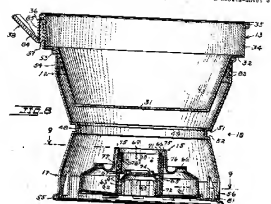
C. P. GOERL

COOKING KIF

Filed March 9, 1939

2,154,305

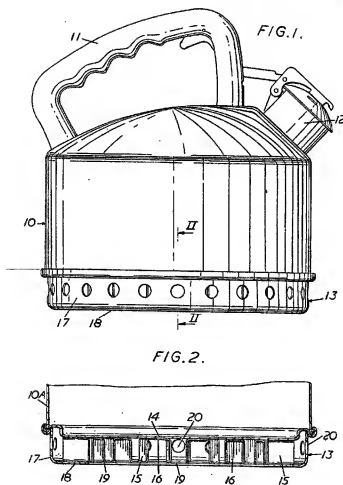
3 Sheets-Sheet 3

INVENTOR
BY CONRAD R. GOERL
Attorney

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GB000882881 teaches, from applicant's same portable heater field of endeavor, placing a single thermally conductive member (15) along the entire extent of a peripheral edge of the external bottom side. The member comprising a continuous piece of aluminum material soldered to and positioned adjacent to and extending continuously over the bottom of a vessel (see page 2, lines 100-105).

882,881 COMPLETE SPECIFICATION
1 SHEET
This drawing is a reproduction of
the Original on a reduced scale.



In regard to claims **106 -116**, for the purpose of making the base readily separable from the base and the base is storable within the vessel and to increase the thermal heat efficiency by confining the flow to heat about the vessel bottom, it would have been obvious to a person

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having ordinary skill in the art to modify **US002154305** to include a single thermally conductive member (15) along the entire extent of a peripheral edge of the external bottom side in the manner set forth in applicant's claims, in view of the teaching of **GB000882881**.

In regard to claims **111-116**, since shape of the protrusions the manner of coupling (e.g. – soldering, brazing, gluing, etc.), the height of the vessel, length of the protrusions, aspect ratio of the protrusions, etc. would depend on numerous design concerns such as the overall size and shape of both the burner and vessel, the type of substance being heat, the amount of heat intended to be transferred to the substance through the vessel wall, etc., to configure the protrusions to have dimensions and to be attached in the manner set forth in the claims, can be viewed as nothing more than merely a matter of choice in design absent the showing of any new or unexpected results produced there from over the prior art of record. Further in this regard it is noted that **GB000882881** itself teaches that elements, such as apertures 20, are of such a size “that the maximum amount of heat is absorbed by the strip 15 which is secured in intimate heat-conducting relationship with the base of the kettle” (beginning page 2, line15).

Claims Rejected under 35 U.S.C. 103(a)

Claims **117-149** are rejected under 35 U.S.C. 103(a) as being unpatentable over **US002154305** (of record) in view of **GB000882881** (newly cited) and **DE 33 39 848** (of record).

US002154305 shows a portable heating system comprising:

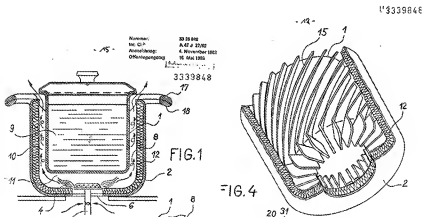
- a vessel (13) having a thermally conductive bottom end defining an external bottom side (31, 32, 33) of the vessel;
- a top housing (16) having a top rim (53) coupled circumferentially to the external bottom side of the vessel (at 32, 53), a side structure (54) extending downwardly from the top rim (53) and having a plurality of exhaust vents (82) formed therein, and a bottom rim (48, 51);
- a bottom housing (17) having a top rim (49, 52) configured to be selectively coupled to the top housing bottom rim (48) and containing a burner (15) having a heat outlet head disposed below the external bottom side of the vessel when the bottom housing is coupled to the top housing (see figure 8), the bottom housing further having a plurality of air inlet vents (81) formed therein.

US002154305 shows and discloses the invention substantially as set forth in the claims with possible exception to:

- a single thermally conductive member (15) along the entire extent of a peripheral edge of the external bottom side. The member comprising a continuous piece of aluminum material soldered to and positioned adjacent to and extending continuously over the bottom of a vessel (see page 2, lines 100-105).

GB000882881 teaches, from applicant's same portable heater field of endeavor, placing a single thermally conductive member (15) along the entire extent of a peripheral edge of the external bottom side. The member comprising a continuous piece of aluminum material soldered to and positioned adjacent to and extending continuously over the bottom of a vessel (see page 2, lines 100-105).

DE 33 39 848 teaches (figures 1 and 2), from applicant's same portable heater field of endeavor dimension the outer burner diameter to be less than the diameter of the inner central cavity formed by the thermally conductive members, for the purpose of effectively directing heat from the burner flames into and along the heat transfer passages.



In regard to claims 117-149, for the purpose of making the base readily separable from the base and the base is storable within the vessel and to increase the thermal heat efficiency by confining the flow to heat about the vessel bottom, it would have been obvious to a person

having ordinary skill in the art to modify **US002154305** to include a single thermally conductive member (15) along the entire extent of a peripheral edge of the external bottom side in the manner set forth in applicant's claims, in view of the teaching of **GB000882881**. Furthermore, in regard to claims **117-149**, for the purpose of effectively directing heat from the burner flames into and along the heat transfer passages, it would have been obvious to a person having ordinary skill in the art to dimension the outer burner diameter to be less than the diameter of the inner central cavity formed by the thermally conductive members, in view of the teaching of **DE 33 39 848**.

In regard to claims **122-128**, **134-139** and **145-149**, since shape of the protrusions the manner of coupling (e.g. – soldering, brazing, gluing, etc.), the height of the vessel, length of the protrusions, aspect ratio of the protrusions, etc. would depend on numerous design concerns such as the overall size and shape of both the burner and vessel, the type of substance being heat, the amount of heat intended to be transferred to the substance through the vessel wall, etc., to configure the protrusions to have dimensions and to be attached in the manner set forth in the claims, can be viewed as nothing more than merely a matter of choice in design absent the showing of any new or unexpected results produced there from over the prior art of record. Further in this regard it is noted that **GB000882881** teaches that elements, such as apertures 20, are of such a size “that the maximum amount of heat is absorbed by the strip 15 which is secured in intimate heat-conducting relationship with the base of the kettle” (beginning page 2, line15).

Claims 156-160: Rejected under 35 U.S.C. 103

Claims **156-158** and **160** are rejected under 35 U.S.C. 103(a) as being unpatentable over **US002154305** (of record) in view of **FR 2 446 097** (of record).

US002154305 shows and discloses the invention substantially as set forth in the claims with possible exception to:

- an igniter portion disposed above the burner and a recess or indentation in the cover (15) for receiving or accommodate the extending igniter portion; and
- friction or slot and dimple attachment means for the upper and lower housings.

FR 2 446 097 teaches, from applicant's same portable heater field of endeavor, providing portable collapsible heaters with burners of the type having a threaded fuel source connection located in the lower portion thereof for connection to a fuel source there below.

Pl. I - 4

244609

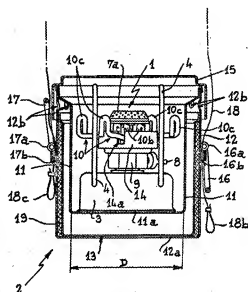
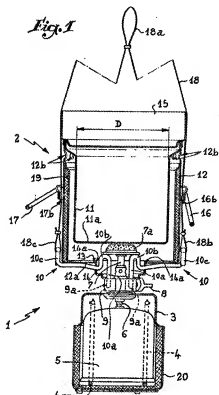


Fig. 5

In regard to claim **155-158** and **160**, for the purpose of providing a suitable alternative burner and fuel source, it would have been obvious to a person having ordinary skill in the art to modify **US002154305** to include a burners of the type having a threaded fuel source connection located in the lower portion, in view of the teaching of **FR 2 446 097**. Also, Official Notice is taken that it is well known to place igniters above, that is, downstream of fuel exiting burner heads as a recognized optimal location to effect ignition of the fuel. Thus, in view of that which is well known, it would have been obvious to a person having ordinary skill in the art to provide

US002154305 with such an igniter arrangement. Regarding any necessary recess or indentation in the cover for receiving or accommodate the extending igniter portion it is noted that the covers (23, 39, 40, and 41) of **US002154305** is formed with such a recess capable of performing this function. In regard to claims **159** and **160**, Official Notice is taken that burner components are known to be secured by slot and dimple attachment means for (see for example **US004374489**). Thus, it would have been obvious to a person having ordinary skill in the art to modify attachment of the upper and lower housings in **US002154305** to include such well known securing and fastening arrangement.

Conclusion

See the attached PTO FORM for prior art made of record that is not relied upon, which is considered pertinent to applicant's disclosure.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

USPTO CUSTOMER CONTACT INFORMATION

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Carl D. Price whose telephone number is (571) 272-4880. The examiner can normally be reached on Monday through Friday between 9:00am-5:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Steven B. McAllister can be reached on (571) 272-6785. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Carl D. Price/

Primary Examiner, Art Unit 3749

Index of Claims (continued)

Application/Control No.

10/603,947

Examiner

Carl D. Price

Applicant(s)/Patent under Reexamination

DOWST ET AL.

Art Unit

3749

✓	Rejected
=	Allowed

—	(Through numeral) Cancelled
+	Restricted

N	Non-Elected
I	Interference

A	Appeal
O	Objected

Claim	Date					
	Final	Original	6/25/05	12/1/05	06/22/06	04/30/07
151	✓	✓	✓	✓	✓	✓
152	✓	✓	✓	✓	✓	✓
153	✓	✓	✓	✓	✓	✓
154	✓	✓	✓	✓	✓	✓
155	✓	✓	✓	✓	✓	✓
156	✓	✓	✓	✓	✓	✓
157	✓	✓	✓	✓	✓	✓
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